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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Defendant,

9 -vs-

10 KENNETH DALE GOOCH,
11 Movant.

NO. CR-04-0262-WFN-1

ORDER

12
13 An evidentiary hearing was held March 4, 2010, regarding Movant's Motion to
14 Vacate, Set Aside, or Correct Sentence under 28 U.S.C. §2255 (Ct. Rec. 289). The
15 Defendant, who is in custody, was present and represented by Jeffrey Niesen; Assistant
16 United States Attorney Timothy Ohms represented the Government. The Court heard
17 testimony from Dan Johnson, Tracy O'Donnal, Ted Pulver, Kenneth Gooch, Amanda Card
18 and Special Agent William F. Ramsey.

19 The Court has reviewed the file, briefing, and the Motion and is fully informed. This
20 Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

21 **IT IS ORDERED** that:

22 1. Movant's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C.
23 § 2255, **Ct. Rec. 289**, is **DENIED** for the reasons stated at the hearing. Additionally, the
24 Court notes that even if Mr. Johnson should have more diligently pursued interviewing
25 Ms. Troubt and Ms. Card, any failure to do so did not cause Movant prejudice. Ms. Troubt
26 had the potential to further implicate Movant. By not calling Ms. Troubt, Mr. Johnson

1 minimized the impact of her ability to link Movant with the gun formerly belonging to Ms.
2 Troubt's boyfriend.

3 2. An appeal of this Order may not be taken unless this Court or a circuit justice
4 issues a certificate of appealability finding that "the applicant has made a substantial showing
5 of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2006). This requires
6 a showing that "reasonable jurists would find the district Court's assessment of the
7 constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
8 The Court concludes that jurists of reason may differ with the Court's conclusion that the
9 Movant has failed to make a substantial showing of a denial of a constitutional right. Thus
10 a certificate of appealability shall issue.

11 The District Court Executive is directed to:

- 12 • File this Order and provide copies to counsel;
13 • Inform the Ninth Circuit Court of Appeals that if the Movant files a Notice of
14 Appeal that a certificate of appealability is **GRANTED**;
15 • **CLOSE** the corresponding civil file, **CV-09-148-WFN**.

16 **DATED** this 8th day of March, 2010.

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18 s/ Wm. Fremming Nielsen
19 03-08 WM. FREMMING NIELSEN
20 SENIOR UNITED STATES DISTRICT JUDGE
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